

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**DANIEL BRYAN KELLY,)
Plaintiff,)
v.) CIVIL ACTION NO.: 2:05-cv-1150-T
RICKY OWENS, et al.,)
Defendants.)**

**COOSA COUNTY SHERIFF RICKY OWENS'S MOTION TO DISMISS
PLAINTIFF'S AMENDED COMPLAINT**

COMES NOW Coosa County Sheriff Ricky Owens, a Defendant in the above-entitled action, and moves this Court to dismiss all of the Plaintiff's claims against him, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. As grounds therefor, Defendant states as follow:

1. The Plaintiff brings this 42 U.S.C. § 1983 lawsuit alleging violations of his Eighth and Fourteenth Amendment rights against Sheriff Owens in his official and individual capacities.
2. As understood by Sheriff Owens, the Plaintiff's claims against him include:
 - a. An Eighth/Fourteenth Amendment claim alleging deliberate indifference to a serious medical condition by failing to provide medical care (Count I);
 - b. An Eighth/Fourteenth Amendment claim alleging deliberate indifference to a serious medical condition by delaying medical care (Count I);
 - c. An Eighth/Fourteenth Amendment claim alleging deliberate indifference to a serious medical condition by failing to provide adequate medical care (Count II);
 - d. An Eighth/Fourteenth Amendment claim for failure to train the Coosa County Jail staff to recognize when inmates needed medical or psychological care (Count II);

e. An Eighth/Fourteenth Amendment claim alleging unconstitutional jail conditions (Count III);

f. An Eighth/Fourteenth Amendment claim for failure to train the Coosa County Jail staff to not mistreat prisoners (Count IV); and

g. An Eighth/Fourteenth Amendment claim for deliberate indifference to a serious risk of harm in failing to stop the Plaintiff from being abused (Count V).

3. The Plaintiff's official capacity claims are due to be dismissed because:

a. Sheriff Owens is entitled to Eleventh Amendment immunity;

b. Sheriff Owens, in his official capacity, is not a "person" for purposes of 42 U.S.C. § 1983; and

c. Any equitable claims:

(1) are moot;

(2) not justiciable because the Plaintiff lacks standing; and/or

(3) fail under the facts pled.

4. All of the Plaintiff's Eighth Amendment claims are due to be dismissed because the Plaintiff was a pretrial detainee.

5. Sheriff Owens is entitled to qualified immunity on each of the Plaintiff's claims against him in his individual capacity.

WHEREFORE, THE ABOVE PREMISES CONSIDERED, Coosa County Sheriff Ricky Owens moves this Court to dismiss all claims made against him and award him costs and attorney's fees pursuant to 42 U.S.C. § 1988.

Respectfully submitted this 2nd day of June, 2006.

s/Gary L. Willford, Jr.

KENDRICK E. WEBB – Bar No. WEB022
GARY L. WILLFORD, JR. – Bar No. WIL198
Attorneys for Defendant Ricky Owens
WEBB & ELEY, P.C.
7474 Halcyon Pointe Road (36117)
Post Office Box 240909
Montgomery, Alabama 36124
Telephone: (334) 262-1850
Fax: (334) 262-1889
E-mail: gwillford@webbeley.com

CERTIFICATE OF SERVICE

I hereby certify that on this the 2nd day of June, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: **Richard J. Stockham, III, Kristi Allen Dowdy, and Stephen Michael Doyle.**

s/Gary L. Willford, Jr.
OF COUNSEL